

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MEREDITH CHADWICK RAY and)	
PHILLIP RAY,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 3:07CV175-WHA
)	
FORD MOTOR COMPANY,)	
)	
Defendant.)	

MOTION TO TRANSFER VENUE

COMES NOW Defendant, Ford Motor Company ("Ford"), and files its Motion to Transfer Venue requesting this Court to transfer this action to the United States District Court for the Middle District of Alabama, Eastern Division pursuant to 28 U.S.C.S. § 1404(b). In support of its Motion, the Defendant would show unto the Court as follows:

1. Plaintiffs filed their Complaint in the United States District Court for the Middle District of Alabama, Northern Division on or about March 6, 2007. There are no allegations in the Complaint with respect to the Plaintiffs' residence or the occurrence of the accident which otherwise suggests that venue would be appropriate in the Northern Division of the Middle District of Alabama.

2. As this Court is aware, the Eastern Division of the Middle District of Alabama encompasses Lee, Chambers and Tallapoosa counties. 28 U.S.C. § 81(b)(3).

3. It is undisputed that Plaintiffs are residents of Chambers County. (See Complaint, ¶¶ 1-2).

4. It is further undisputed that the automotive accident from which this case arises occurred in Lee County, Alabama. (See Alabama Uniform Traffic Accident Report attached hereto as Exhibit "A").

5. This automotive product liability case alleges that the subject 2002 Mercury Moutaineer is defective and unreasonably dangerous under Alabama substantive law. According to the dealership materials relating to the purchase of the vehicle, the vehicle was purchased in Tallapoosa County, Alabama. (See Dealership Materials attached hereto as Exhibit "B").

6. Ford preserved its defense of improper venue by pleading the same in its Answer. (See Defendant Ford's Answer).

7. Under 28 U.S.C. §1404, the transfer of an action from one division to another division within the same district can be made for the convenience of the parties and witnesses and in the interest of justice. 28 U.S.C. §1404 states:

- (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.
- (b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which it is pending to any other division in the same district.

(28 U.S.C. 1404(a), (b)).

8. The United States Court of Appeals for the Eleventh Circuit has held that a defendant who is dissatisfied with the plaintiff's choice of venue may attempt to transfer to another division or district. *Hollis v. Fla. State Univ.*, 259 F.3d 1295, 1296 (11th Cir. 2001). Federal courts have consistently held that under 28 U.S.C.S. §1404(b), a defendant may transfer an action to another division within the same district. See e.g., *Weber v. Coney*, 642 F.2d 91, 93 (5th Cir. 1981); *Tapia v. Dugger*, No. SA-06-CA-0147-XR, 2006 WL 2620530, at *2 (W.D. Tex. Sept. 7, 2006); *Clear Channel Outdoor, Inc. v. Rubloff Oakridge Algonquin*, No. 03 C 3063, 2003 WL 2238299, at *3 (N.D. Ill. Oct. 16, 2003); *White v. ABCO Engineering Corp.*, 199 F.3d 140, 143 (3d Cir. 1999); *Clinton Foods, Inc. v. United States*, 188 F.2d 289, 293 (4th Cir.), cert. denied, 342 U.S. 825 (1951).

9. Courts have held that the determination of a §1404(b) transfer should be made according to the same standards that govern a §1404(a) transfer - convenience and justice. See 28 U.S.C.S. §1404(a); *Tapia*, 2006 WL 2620530, at *3; *Clear Channel Outdoor, Inc.*, 2003 WL 22382999, at *3. Because no part of the events comprising the subject of this litigation occurred in the Northern Division of the Middle District of Alabama, venue in the Northern Division is both unjust and inconvenient. The Plaintiffs reside in the Eastern Division of the Middle District of Alabama; the accident that is the subject of this litigation occurred in the Eastern Division of the Middle District of Alabama; the vehicle involved in the accident was purchased by the Plaintiffs in the Eastern Division of the Middle District of Alabama; and all witnesses of the accident likely reside in the Eastern Division of the Middle District of Alabama. The facts of the case indicate that there is no connection between this case and the Northern Division of the Middle District of Alabama. As such, there are no justifiable grounds for the action being filed in the Northern Division of the Middle District of Alabama. Thus, the Plaintiffs' decision to file this case in the Northern Division seems to be a clear example of forum shopping.

10. Pursuant to 28 U.S.C. §1404(b), for the convenience of all interested parties and in the interest of justice, this action is due to be transferred to the Eastern Division of the Middle District of Alabama.

WHEREFORE, PREMISES CONSIDERED, Defendant Ford Motor Company respectfully requests this Court to enter an Order transferring this case to the Eastern Division of the Middle District of Alabama.

/s/ Bradley J. McGiboney
D. Alan Thomas (dat@hfsllp.com)
ASB-8351-T77D
Bradley J. McGiboney (bjm@hfsllp.com)
ASB-4434-B60M

OF COUNSEL:

Huie, Fernambucq & Stewart, LLP
Three Protective Center
2801 Highway 280 South, Suite 200
Birmingham, Alabama 35223
(205) 251-1193

ATTORNEYS FOR DEFENDANT,
FORD MOTOR COMPANY

ORAL ARGUMENT REQUESTED

CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the foregoing document with the Clerk of Court using the CM/ECF system to the following CM/ECF participants:

D. Michael Andrews, Esq.
BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.
P. O. Box 4160
Montgomery, AL 36104

This 3rd day of July, 2007.

/s/ Bradley J. McGiboney
Of Counsel

AST-27
REV. 1/91

RAY-00000001

- PRIVATE PROPERTY -
ALABAMA UNIFORM TRAFFIC ACCIDENT REPORT

OPS

Accident No.

Shaded Areas To Be Used By Data Processing Only

Sheet 1 of 1 Sheet(s) Microfilm No. _____Local Case No. 06-003553

LOCATION AND TIME		DATE		TIME	AM	DAY OF WEEK	COUNTY	CITY	ROUTE	Highway Classification	Local Zone
On Street, Road or Highway		04	21	2006	PM	TH	43	OPELIKA		1- Interstate 2- State 3- Federal	01
At Intersection of or Between (Node 1)		ACCEPTANCE INSURANCE									
And (Node 2)		1203 WEST END COURT PARKING LOT									
Intersection Related		1- Mode 1 2- Mode 2 1- Not Related 2- Related									
First Harmful Event		15 5 NA FT.									
Driver Full Name		DRIVERLESS MOVING VEHICLE									
Street Address		1008 SOUTH 1ST AVENUE									
City and State		LANEY, AL									
ZIP		36663									
Telephone No.		334-642-0881									
Driver's License No.		NA									
OL Class		NA									
OL Status		NA									
List Restrictions		NA									
CDL Status		NA									
List Endorsements		NA									
Residence Less Than 25 Miles		Yes									
Social Security No.		NA									
Driver's Condition		1- No Defect 2- Apparently Asleep 3- Fatigued 4- Ill 5- Other 6- Unknown									
Maneuver		Travel Road Name									
Travel Road Name		1203 WEST END COURT									
Road Code		NA									
Travel Direction		N E W A-Not on Rd U-Unknown									
Other Contr Circumstance		97									
Prime Harm Event		15									
Event Loc		5									
Veh Year		2002									
Make		MERCE									
Model		MDK									
Body		NA									
VIN		4M2ZNE6W02UJ27911									
Owner's Name		MEREDITH RAY									
Street or R.F.D.		1008 SOUTH 1ST AVENUE									
City		LANEY									
State		AL									
ZIP		36663									
Telephone No.		334-642-0881									
Type		1- Auto 2- Station Wagon 3- Pick Up 4- Van 5- Truck Tractor 6- Other Truck 7- Comm. Bus 8- School Bus 9- Other Bus 10- Motorcycle									
Usage		1- Personal 2- Driver Trng 3- Construction 4- Ambulance/Paramedical 5- Military 6- Taxi 7- Transport Prop 8- Agriculture 9- Wrecker/Tow									
Hazardous Cargo		1- None 2- Explosive 3- Gas 4- Flammable Solids 5- Oxidizer/Peroxide 6- Poison 7- Radioactive Matl 8- Corrosive Material 9- Other									
Attachment		1- None 2- Mobile Home 3- Semi Trailer 4- Utility Trailer 5- 4-Wheel Trailer 6- Boat Trailer 7- Camper Trailer 8- Towed Vehicle 9- Tanker 10- Pole Trailer 11- Double Trailer 98- Other									
Contributing Defect		1- Brakes 2- Steering 3- Power Plant 4- Suspension 5- Tires 6- Exhaust 7- Lights 8- Turn Signal 9- Windows/W Shield 10- Restraint Sys 11- Wheels 12- Truck Coupling 13- Cargo 14- Fuel System 98- Other 99- Unknown									
Circle areas Damaged On Diagram		10 Under Carriage 11 Attachment									
Speed Limit		NA MPH									
Est Speed		99 MPH									
Citation Offense Charged		None									
Damage		1- None Visible 2- Not Disabled 3- Disabled									
Vehicle Towed By Whom		NA									
To Where		NA									
Driver/Pedestrian Full Name		MEREDITH CHADWICK RAY									
Street Address		1008 SOUTH 1ST AVENUE									
City and State		LANEY, AL									
ZIP		36663									
Telephone No.		334-642-0881									
Driver's License No.		NA									
OL Class		NA									
OL Status		NA									
List Restrictions		NA									
CDL Status		NA									
List Endorsements		NA									
Residence Less Than 25 Miles		Yes									
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Citation Offense Charged		None									
Damage		1- None Visible 2- Not Disabled 3- Disabled									
Vehicle Towed By Whom		NA									
To Where		NA									
Contributing Circumstances		01- Improper Passing 02- Improper Lane Change/Usage 03- Improper Turn/U-Turn 04- Following Too Close 05- Misdemeanor Stopping Dist 06- Over Speed Limit 07- Avoid Object/Person/Veh 08- Unavoid Object/Person/Veh 09- Improper Backing 10- Improper Traffic Control 11- Improper/No Signal 12- Improper Driving-Emotion 13- Road Defect 14- Vision Obstruction 15- Defective Equipment 16- DUI 17- Under Min Speed 18- Under Min Size 19- Improper Load/Size 20- Improper Attachment 21- Fail to Yield Right-of-Way 22- Driver Condition 23- Wrong Side of Road 24- Veh Pushed by Person 25- Veh Left Road 26- Driver Not in Control 27- Load Shift 28- Parts/Cargo from Veh 29- Ped Violation 30- Veh Wgt/Hgt/Length 31- Ped Under Influence 32- Illegal/Improper Parking 33- Horse 34- Other									
Driver's Maneuvers		01- Go Straight Ahead 02- Pass on Left 03- Pass on 1-Way Street 04- Pass on Right 05- Go Straight-Left Turn Lane 06- Go Straight-Right Turn Lane 07- Change Lanes-Left 08- Change Lanes-Right 09- Merge-Left 10- Merge-Right 11- Right Turn 12- Left Turn 13- U-Turn 14- Start from Park 15- Start in Traffic 16- Stopping/Stopping 17- Stopped in Traffic 18- Avoid Object in Road 19- Entering Private Road/Property 20- Pedestrian Side with Traffic									
Event Loc		1- On Roadway 2- Off Roadway 3- Median 4- Driveway 5- Private Road/Property 6- In Intersection									

DEFENDANT'S

EXHIBIT

A

SEATING	Other Involved Unit (Circle One)										Other Involved Unit (Circle One)										CODES																																																																																																																																																																																																																										
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VICTIMS	<p>Name: <u>MICHAEL CHADWICK RAY</u> Address: <u>1004 1ST AVENUE LANETT, AL</u></p> <p>Taken To: <u>EAST ALABAMA MEDICAL CENTER</u> Taken By: <u>EMERGENCY MEDICAL SERVICES</u></p> <p>Name: <u> </u> Address: <u> </u></p> <p>Taken To: <u> </u> Taken By: <u> </u></p>										<p>Unit No. Seat Pos. Injury Type Age Sex Eject. Seat Belt First Aid By</p> <p><u>2</u> <u>12</u> <u>A</u> <u>32</u> <u>F</u> <u>N</u> <u>A</u></p>										<p>CODES</p> <p>X - Killed B - Bruise/Abrasion/Swelling A - Visible or Carried from Scene C - Not Visible - Has Pain/Faint N - Not F - Fully P - Partially E - Ejected T - Trapped U - Unknown A - Not Applicable A - Ambulance Attended D - Doctor M - Paramedic O - Other P - Police U - Unknown N - None</p>																																																																																																																																																																																																																										
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<p>Officer's Opinion of What Happened: <u>MYI WAS TRAVELING SOUTH IN THE PARKING LOT OF ASSISTANCE EMERGENCY. PROTESTER WAS WALKING EAST IN THE PARKING LOT SE ACCEPTANCE. MYI WAS KNOCKED OUT SE WHEEL BY A PROTESTER. AND MYI STANK PROTESTER, AND WAS PENNED UP AGAINST THE WALL OF ACCEPTANCE INHIBITING BY MYI</u></p>																																																																																																																																																																																																																																															
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DEALER		26U 017 VIN 4M2ZU66W02UJ37911	SUGGESTED RETAIL PRICE	AMOUNT
U665 MOUNTAINEER 4X2 4DR/114			28950.00	26386.00
2002 MODEL YEAR				
YZ OXFORD WHITE CLEARCOAT				
GP MED PARCHMNT LTHR SPT BKT				
.OVERHEAD CONSOLE				
58K .AM/FM CASSETTE CD				
.3RD ROW SEAT PACKAGE				
99W 4.6L SOHC V8 ENGINE			695.00	591.00
44V AUTOMATIC OVERDRIVE TRANS				
T44 .P245/70R16 BSW A/S TIRES				
X45 3.55 RATIO REGULAR AXLE				
153 FRONT LICENSE PLATE BRACKET			NC	NC
186 RUNNING BOARDS			395.00	336.00
PREM CAST ALUM WHEELS 16X7				
66A CONVENIENCE GROUP			595.00	506.00
.ILLUM VISORS & APPROACH LAMPS				
.ADJUSTABLE PEDALS				
.HOMELINK				
.AUTO LAMP HEADLAMPS				
G SPT BKT LEATHER TRIMMED			655.00	557.00
TOTAL VEHICLE & OPTIONS			31290.00	28376.00
DESTINATION & DELIVERY			625.00	625.00
SCHEDULE A (MEMO)			.00	
TOTAL FOR VEHICLE			31915.00	
13 U.S. GAL GAS FACTORY				24.57
PRICED DORA				
BATCH-ID 2H08112943 N RC 2X				
PRICE LEVEL 255230U66				
VIN: 4M2ZU66W02UJ37911				
SHIPPING WEIGHT 4343 LBS.				

***** REINVOICED PRIOR TO PLANT RELEASE *****

THIS INVOICE MAY NOT REFLECT THE FINAL COST OF THE VEHICLE IN VIEW OF THE POSSIBILITY OF FUTURE REBATES, ALLOWANCES, DISCOUNTS AND INCENTIVE AWARDS FROM FORD MOTOR COMPANY TO THE DEALER.

FDAF/LMDA ASSESSMENT	INVOICE TOTAL	LESS HOLDBACK FOR DEALER ACCOUNT	LESS APPROX. FINANCING COST FOR DEALER ACCOUNT	MEMO: INVOICE LESS HOLDBACK & FIN. COST	A & D PLAN 27827.57
335.00	29360.57	940.00	285.00	28135.57	X PLAN 29090.67

940.00 71.00 1990.00 .00 869.00 26101.00

SOLD TO

Tallapoosa Ford 26U017
P.O. BOX 340
Alexander City AL 35011

T.O.	76	STATE
2	6	AL

CS02

SHIP TO (IF OTHER THAN ABOVE)

DATE INV. PREPARED	ITEM NUMBER	TRIM	TRANSIT
08/08/02	26-0607	GP	09

SHIP THROUGH

INVOICE & UNIT IDENTIFICATION NO.	FINAL ASSEMBLY POINT	FINAL COMPANY AND/OR BANK	000001
4M2ZU66W02UJ37911	LOUISVILLE	Ford Motor Credit	
2UJ37911 4M U66 20020808 020808 2H081 N 255 26U017			

THIS INVOICE TO BE USED FOR THE BILLING OF VEHICLES ONLY

DEALER'S COPY

2

2360.57 KUI

